

Docket No.: 10-0637
Bench Date: 02-09-11
Deadline: None

MEMORANDUM

TO: The Commission

FROM: Lisa M. Tapia, Administrative Law Judge

DATE: January 4, 2011

SUBJECT: NTS Services, Inc.
-vs-
Gallatin River Communications, LLC. d/b/a CenturyLink

Formal Complaint and Request for Declaratory Ruling pursuant to Sections 13-515 and 10-108 of the Illinois Public Utilities Act.

RECOMMENDATION: Dismiss complaint without prejudice assessing Commission fees and costs to NTS.

On November 8, 2010, NTS Services, Inc., ("NTS") filed a Complaint with the Commission against CenturyLink alleging that CenturyLink's charges and policies violate the terms of the current interconnection agreement.

On November 19, 2010, Staff and CenturyLink each filed a motion to dismiss the Complaint without prejudice. Staff asserted that the Complaint should be dismissed based on NTS' failure to follow jurisdictional and procedural requirements under Sections 13-515 and 10-108 of the Act but formed no opinion regarding the merits of the claims enunciated by NTS in its Complaint. CenturyLink concurred with assertions contained in Staff's motion.

On November 23, 2010, prior to the prehearing conference, NTS filed its motion to dismiss. In its motion, NTS asserted that in order to conserve resources and in order to eliminate any claim of error, and so that NTS could litigate this matter and reach a just conclusion based upon the substantive issues of the case, NTS requested its Complaint be dismissed without prejudice.

A Proposed Order was served which would dismiss the Complaint without prejudice and assess Commission fees and costs to NTS. With regard to attorney's fees and costs, the Proposed Order provided for each party to bear its own attorneys fees and costs.

On December 30, 2010, NTS filed exceptions. NTS takes exception to the fees and costs conclusion of the Proposed Order. Among other things, NTS argues an assessment of costs is premature. According to NTS, costs should be apportioned only after the Commission has conducted an investigation, conducted proceedings, and made a determination as to the relative merits of the respective arguments of Complainant and Respondent.

On January 7, 2011, Staff filed its Reply to Briefs on Exceptions supporting the Proposed Order imposing fees and costs to NTS, asserting that the amount of costs is mandatory and that there is no basis for a waiver of such costs in this case.

The attached Order is substantively the same as the Proposed Order which was served. Section 13-515 of the Public Utilities Act ("Act") provides that the Commission shall assess the parties for all of the Commission's costs of investigation and conduct of proceedings brought under Section 13-515 of the Act. While NTS' position regarding assessing fees and costs is understandable, costs were incurred to conduct this proceeding because NTS filed a complaint under Section 13-515 of the Act. In my view, it is reasonable and appropriate under the Act for NTS to bear the costs of its actions. Therefore, I recommend that the Commission adopt the Order attached hereto.

LMT